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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 810

MR. AND MRS. J. H. ANDERSON,
Petitioners,

vs.

THE UNITED STATES OF AMERICA.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR REHEARING.

H. W. Emerson,
Counsel for Petitioners.

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Respondent.

PETITION FOR REHEARING.

To The Honorable The Supreme Court of The United States:

Come now Mr. and Mrs. J. H. Anderson, the petitioners in the above entitled cause, and present this, their petition, for a rehearing of the action of the Court in denying their petition for a writ of certiorari, and respectfully urge the Court to rehear and grant the writ;

I.

Because this is the first time the income of a charitable trust has been taxed to the grantor where the trust was of a longer duration than one year and both the Second and Third Circuits have denied the right of the Commissioner under these conditions (*Commissioner* v. *Bok,* 132 F. (2d) 365; *Commissioner* v. *Chamberlain,* 121 F. (2d) 765). In the *Lamont* case (*Commissioner* v. *Lamont,* 127 F. (2d) 875) the Second Circuit distinguishes the *Chamberlain* case but does not overrule it. The *Lamont* case involved a trust

for one year or less and the grantor exercised uncontrolled power to substitute such securities as she desired as well as other controls over the corpus.

Congress has expressly exempted trusts, the income from which is used to pay premiums on life insurance payable to a charitable beneficiary. (26 U. S. C. A. 167 (3).*[1] Here the income is payable directly to the charitable beneficiary and it seems to petitioner that every reason for congressional action exempting such trusts applies with greater force to trusts where the income is paid directly to the beneficiary without the intervention of an insurance policy and therefore discloses clearly the legislative policy in connection with a bona fide validly created trust, the income from which is devoted to charitable purposes.

The conflict is real and, if income of a trust devoted to charitable purposes is to be taxed to the grantor of a trust where the grantor, in fact, exercised no control over the corpus thereof, it should be only after an authoritative decision of this Court so holding.

II.

Because the facts stipulated as true, that

(a) Petitioner neither received nor controlled any part of the income of the trust during its five and one-half year term (R. 8 item 7);

(b) Petitioner never exercised any control over the corpus of the trust during its term (R. 8 item 6);

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*[1] (a) Where any part of the income of a trust—

(3) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in section 23 (o), relating to the so-called "charitable contribution" deduction);

then such part of the income of the trust shall be included in computing the net income of the grantor.

must be disregarded or the rule that economic benefit must be received directly or indirectly to produce taxable income announced in *Helvering* vs. *Stuart,* 317 U. S. 154, must be abandoned.

If the facts stipulated as true are accepted, then the rule that "economic gain realized or realizable by the taxpayer is necessary to produce a taxable income under our statutory scheme" has been violated since no income has been received or controlled by petitioner nor devoted to any use remotely giving him any economic benefit, and no control over the corpus of the trust was ever exercised by petitioner as a substitute for direct ownership.

To disregard these facts is to disregard actuality and tax to petitioner income which is not his and from which he has received no economic benefit and it is respectfully submitted that this is contrary to the applicable decisions of this Court and should be reviewed by this Court.

Wherefore, upon the foregoing grounds and for the reasons herein and in the original petition set out, it is most earnestly and respectfully urged that this petition for a rehearing be granted and that the action of the Court denying the writ of certiorari prayed for be upon further consideration reversed and the writ granted.

Respectfully submitted,

M. W. EGERTON,
Counsel for Petitioners.

I, Counsel for the above named petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

M. W. EGERTON,
Counsel for Petitioners.